Supreme Court of Iowa.

HAWLEY *v.* HUNT.

State insolvent laws have no extra-territorial operation: and a creditor cannot be compelled by a state of which he is not a citizen or resident to become a party to insolvent proceedings therein; and such proceedings cannot discharge a debt due to a non-resident creditor, unless he voluntarily submits to the jurisdiction by becoming a party to the proceedings, or claiming a dividend thereunder.

A non-resident and non-assenting creditor is not bound by a debtor's discharge under state insolvent laws, no matter where the debt originated, or is made payable: *citizenship* of the parties governs, and not the *place* where the contract was made or where it is to be performed.

This rule applies to a case where a non-resident creditor has recovered judgment against his debtor in the state where the latter resides; and also to the case where the judgment has been assigned to a non-resident creditor and notice given to the debtor, before the latter commenced proceedings to obtain his discharge.

The history of the Federal and state adjudications on the subject of the effect of discharges under state insolvent laws, examined by DILLON, C. J.

APPEAL from Jackson District Court.

The plaintiff sued on two judgments rendered against the defendant in New York. The defence relied on was a discharge of the defendant under the insolvent law of that state.

In 1854, two judgments were rendered against the defendant in the Supreme Court of New York. The defendant was at that time a resident and citizen of that state. Those judgments (as would appear from copies of the complaints), were rendered upon promissory notes executed by the defendant respectively to one Pierce (who assigned the note to one Rulsion), and to one Thomas. Where the notes were executed did not otherwise appear than by averment in the complaints in the actions in New York, that one of the notes was executed at "Denmark," and the other at "Gouverneur," but in what state was not alleged. Of what state Rulsion and Thomas, who recovered the judgments in New York against the defendant, were citizens, did not appear.

In 1856, the defendant removed from New York and *became a resident of Iowa*, and was a resident of Iowa at the time of the commencement of the present action, and at the time the judgment therein was rendered in his favor, from which the plaintiff prosecutes the present appeal. In 1860, one of the judgments obtained in New York against the defendant was assigned by the

judgment-plaintiff to Hawley, the plaintiff in the present action, *then and now a resident and citizen of Iowa.*

In 1861, the other judgment was likewise assigned to Hawley.

In 1862, Hawley commenced the present action on the above-mentioned judgments against the defendant in the District Court of Jackson county, Iowa (defendant being a resident of that county), and obtained personal service of process upon him. Defendant appeared, and in March 1862, filed an answer, admitting the rendition of judgment against him in New York as alleged, and pleaded payment, &c. The cause was continued from time to time, until, in March 1865, an amended answer was filed, in which the defendant alleged that "on the 3d day of August 1863, he was duly discharged from all his debts under the statute of the state of New York, providing for the discharge of insolvents." A copy of the discharge was annexed to the answer. The certificate of discharge was dated on the 3d day of August 1863, and the officer, after reciting the proceedings, declares that "he does hereby discharge the said insolvent from all his debts and from imprisonment, pursuant to the provisions of the statute."

The foregoing facts were uncontroverted. On the trial the plaintiff maintained that the defendant was not a resident of New York at the time he applied for and obtained a discharge under the insolvent law of that state. This the defendant denied, and on this issue both parties introduced evidence.

A jury was waived and the cause tried by the court, which gave judgment for the defendant. The plaintiff appealed.

C. M. Dunbar, for appellant.

W. E. Leffingwell, for appellee.

The opinion of the court was delivered by

DILLON, C. J.—Respecting the validity of discharges under state insolvent laws, where the creditor is a non-resident of the state granting the discharge, there has been much discussion, much conflict of view, and, until quite recently, on some points much doubt.

But in view of the authoritative adjudications of the Supreme Court of the United States, presently to be referred to, and of the leading decisions of the state courts, cited below, the law, so

far as relates to the present case, may be stated in a single sentence.

The settled doctrine now is, that a debt attends the person of the creditor, no matter in what state the debt originated or is made payable; that a creditor cannot be compelled by a state of which he is not a citizen or resident, to become a party to insolvent proceedings therein; that such proceedings are judicial in their nature, so that jurisdiction over the person of the creditor is essential; that notice is requisite to jurisdiction in such cases, and can no more be given in insolvent proceedings than in personal actions where the party to be notified resides out of the state, and hence a discharge under a state insolvent law will not and cannot discharge a debt due to a citizen of another state, unless the latter appears and voluntarily submits to the jurisdiction of the court by becoming a party to the proceeding, or claiming a dividend thereunder.

As direct authority for this statement of the law, we refer to the following decisions of the Supreme Court of the United States: *Baldwin* v. *Hale*, 1 Wallace 223, 1863; s. c. 3 Am. Law Reg. (N. S.) 462, and note by Judge REDFIELD; *Ogden* v. *Saunders*, 12 Wheat. 213; *Boyle* v. *Zacharie*, 6 Pet. 348; *Cook* v. *Moffat*, 5 How. 310; *Suydam et al.* v. *Broadnax*, 14 Pet. 75.

See also the following cases and authorities: *Donnelly* v. *Corbett*, 7 N. Y. (3 Seld.) 500; *Felch* v. *Bugbee*, 48 Maine 9; s. c. 9 Am. Law Reg. (O. S.) 104; *Beers* v. *Rhea*, 5 Texas 349; *Poe* v. *Duck*, 5 Md. 1; *Anderson* v. *Wheeler*, 25 Conn. 603; *Crow* v. *Coons*, 27 Mo. 512; *Pugh* v. *Bussel*, 2 Blackf. 394; *Beer* v. *Hooper*, 32 Miss. 246; *Woodhull* v. *Wagner*, Baldw. C. C. Rep. 300; *Byrd* v. *Badger*, 1 McAll. 263; *Springer* v. *Foster*, 2 Story 387; 2 Story Const., § 1390; Confl. Laws, § 341; 2 Kent Com. (9 ed.) 503; *Kelly* v. *Drury*, 9 Allen 27, 1864.

I have said that the settled law now is, that a non-resident and non-assenting creditor is not bound by the debtor's discharge under state insolvent laws, no matter where the debt originated or is made payable. In other words, the *citizenship* of the parties governs, and not the *place* where the contract was made, or where it is to be performed.

It is perhaps desirable to trace briefly the line of decision leading to and establishing the doctrine as above stated.

Respecting state insolvent laws the controlling constitutional provision is, that "no state shall pass any law impairing the obligation of contracts."

"Any law," to use the language of Mr. Webster, in his argument in *Ogden* v. *Saunders*, 6 Webs. Works 26, impairs the obligation of a contract *which discharges the obligation without fulfilling it.*"

In *Sturgis* v. *Crowninshield*, 4 Wheat. 122, the Supreme Court of the United States held such laws to be invalid as to pre-existing contracts. Subsequently the great case of *Ogden* v. *Saunders*, 12 Wheat. 213, came before the court. Respecting just what that case decided there has been much difference of opinion; but these differences have been set at rest by the later decision in *Baldwin* v. *Hale*, before cited.

In *Ogden* v. *Saunders*, one point ruled or declared was, that a state insolvent law or bankrupt law was not a law impairing the obligation of contracts as respects debts contracted *after* the enactment of such law. This was upon the ground, largely if not wholly, that every contract made in a state must be taken to have relation to the existing law of the state which becomes, so to speak, a part of it, attached to it and attendant upon it; and since the insolvent law declares a right on the part of the debtor to be discharged from contracts thereafter made on certain terms, whoever becomes interested in such contracts takes them subject to this right, and the exercise of such right cannot be said to impair the obligation of the contract. It was this point in the case which has been the cause of much controversy in the state courts. In his argument Mr. Webster combated with great force the proposition "that the law itself was part of the contract, and therefore cannot impair it:" 6 vol. Webs. Works, 29.

At present we have no occasion to enter upon a discussion of this vexed proposition—the Supreme Court asserted that a state bankrupt law was not invalid as respects *subsequent* contracts. And the point ruled in *Ogden* v. *Saunders*, was that a state insolvent law cannot affect the rights of creditors who are citizens of other states.

The second opinion of Mr. Justice JOHNSON (12 Wheat. 258), says Judge CURTIS (Digest, p. 114, § 4), was concurred in on the general question and settled the law involved therein. (On this

point see also, *Boyle* v. *Zacharie*, 6 Pet. 348, 643; *Cook* v. *Moffat*, 5 How. 310; *Baldwin* v. *Hale*, *supra*, per CLIFFORD, J.)

The principle of the decision in *Ogden* v. *Saunders*, as stated by Mr. Justice JOHNSON, is, "that as between citizens of the same state, a discharge of a bankrupt by the laws of that state is valid as it affects posterior contracts; *as against citizens of other states, it is invalid as to all contracts.*"

In *Cook* v. *Moffatt*, 5 How. 309, the leading case of *Ogden* v. *Saunders* was reviewed, the soundness of many of the reasons assigned in former opinions questioned, but the court held, among other points, that "a certificate of discharge under an insolvent law will not bar an action brought by a citizen of another state on a contract made with him;" that state insolvent laws "can have no effect on contracts made before their enactment, *or beyond their territory.*" This language, it will be seen, is not free from uncertainty, and does not necessarily exclude the notion if a contract is made originally between citizens of a state and *is to be performed there*, and a non-resident subsequently becomes interested in or the owner of such contract (for example, a bill of exchange), he shall not be bound by a discharge granted in pursuance of a state law in existence at the time when the contract was made. The Supreme Court of Massachusetts, admitting its duty to follow what was *decided* on this subject by the Supreme Court of the United States, held that even as between citizens of different states, a state insolvent discharge was effectual *in cases where it appears by the terms of the contract that it was made and to be performed in the state granting the discharge.* This was in *Scribner* v. *Fisher*, 2 Gray 43, Mr. Justice METCALF *dissenting.* This decision was followed in other cases in that state which, without reargument, were rested upon it.

In *Demeritt* v. *Exchange Bank*, 10 Law Rep. 606 (March 1858), Mr. Justice CURTIS, then of the Supreme Court of the United States, in express terms denied the correctness of *Scribner* v. *Fisher*, stating that it was in conflict with *Ogden* v. *Saunders* and *Boyle* v. *Zacharie*. "It is urged," says Judge CURTIS, "that where the contract is *to be performed in the state* it is not within *Ogden* v. *Saunders*. It has been so held in *Scribner* v. *Fisher*, 2 Gray 43. But I cannot concur in that opinion. I consider the settled rule to be that a state law cannot discharge or suspend the

obligation of a contract, though made and to be performed within the state, where it is a contract with a citizen of another state."

In *Donnelly* v. *Corbett*, 7 N. Y. (3 Seld.) 500, 1852, the Court of Appeals of New York; in *Felch* v. *Bugbee*, 48 Me. 9, s. c., 9 Am. Law Reg. (O. S.) 104, 1860, the Supreme Judicial Court of Maine; in *Anderson* v. *Wheeler*, 25 Conn. 607, the Supreme Court of Connecticut, and in *Doe* v. *Puck*, 5 Md. 1, the Supreme Court of Maryland, and there are other similar decisions, decided that the distinction taken in *Scribner* v. *Fisher* was unsound, and that state insolvent laws had no extra-territorial effect so as to operate upon the rights of citizens of other states.

But in *Baldwin* v. *Hale*, before cited, the Supreme Court of the United States, in 1863, in terms and by name declared *Scribner* v. *Fisher* to be in conflict with the settled rule of that court. Mr. Justice CLIFFORD, after reviewing the prior decisions and stating the points ruled, says: "But a majority of the court held in *Scribner* v. *Fisher* that if the contract was to be performed in the state where the discharge was obtained, it was a good defence to an action on the contract, although the plaintiff was a citizen of another state and had not in any manner become a party to the proceedings. Irrespective of authority it would be difficult, if not impossible, to sanction that doctrine. Insolvent systems of every kind partake of the character of a judicial investigation. Parties whose rights are to be affected are entitled to be heard, and in order to be heard they must first be notified. Common justice requires that no man shall be condemned without notice and an opportunity to make his defence. Courts of one state have no power to require citizens of other states to become parties to insolvent proceedings. * * * Insolvent laws of one state cannot discharge the contracts of citizens of other states, because they have no extra-territorial operation, and consequently the tribunal sitting under them, unless in cases where a citizen of such other state voluntarily becomes a party to the proceeding, has no jurisdiction in the case. Legal notice cannot be given, and consequently there can be no obligation to appear, and, of course, there can be no legal default."

Independent of its authoritative force, this decision and the grounds upon which it is placed, command unqualified approval. Certain it is, that it is the final and settled doctrine of the Supreme

Court of the United States, with respect to a question of which that tribunal is the ultimate arbiter.

Subsequently, the Supreme Court of Massachusetts, in *Kelly* v. *Drury*, 9 Allen 27, following the decision in *Baldwin* v. *Hale*, itself overruled *Scribner* v. *Fisher*.

The Supreme Court of the United States having thus settled that a citizen of another state cannot be affected by an insolvent discharge in the state in which the debtor resides, even though the contract was made and on its face is to be performed therein, that principle settles this case, and shows that the judgment of the District Court was erroneous on the undisputed facts before it.

Those facts were that the judgments sued on were rendered against the defendant in New York; that he afterwards removed to and became a citizen of Iowa; that both plaintiff and defendant were citizens of this state at the time when the judgments were assigned to the plaintiff, at the time the latter brought suit, and at the time the judgment was rendered which is now appealed from.

The discharge was no bar to the plaintiff's action, even though it be admitted that the defendant concluded to remain in New York, and in good faith applied for this discharge as a citizen of that state.

The assignment of the judgments to the plaintiff made him the owner of them and of the debts of which they were the record evidence. He was as much the owner as if they had been recovered in his name. Our statute recognises the plaintiff as the owner, and allows him to sue thereon in his own name. The defendant had notice of the assignment. He owed the debt, and owed it to the plaintiff. He could not afterwards pay to the assignor, or to any person but the plaintiff.

Both parties *being citizens of Iowa*, and the plaintiff having actually brought suit in Iowa to collect his debt, the plaintiff, though suing upon a New York judgment, was an Iowa creditor, and the defendant would have no more right, as against the plaintiff, subsequently and pending the action, to remove to New York, acquire a discharge which should be valid as against the plaintiff's action in Iowa, than if the defendant had never previously resided in New York, or had while residing there made the contract with the plaintiff at the time a resident of Iowa.

I need not stop to point out the injustice and unreasonableness

of holding that a debtor, pending an action against him, may change his residence, obtain an *ex parte* discharge, resume his residence in the state in which his creditor resides, and then be allowed to plead such discharge as an effectual bar to the plaintiff's action.

The court of no state could, in justice to its citizens, ever give its sanction to such a doctrine, unless it conceived that it was so bound down by authority that it could not unloose itself from its grasp.

The court below undoubtedly proceeded upon the idea of the Supreme Court in Massachusetts in *Scribner* v. *Fisher*, and counsel undoubtedly did not call its attention to the case of *Baldwin* v. *Hale*, since it is not referred to in their briefs in this court.

It was suggested on the argument that the court of New York would have control over judgments rendered in that state, and that the case was or might be different from what it would if the contracts on which the judgments were rendered had been transferred to the plaintiff, a resident of Iowa, and had never been reduced to judgment in New York.

The decisions in this court (*Burtis* v. *Cook & Sargeant*, 16 Iowa 194) treat a judgment rendered as a chose in action. It is a debt, or the record evidence of a debt. The plaintiff, as the assignee, has the same rights as if he had, while a citizen of Iowa, recovered judgment in his own name in New York. In that case it is plain that it could not be discharged against his assent, by a state insolvent proceeding. This suggestion comes right back to the point before discussed and which has been finally set at rest by *Baldwin* v. *Hale*, viz., that if the creditor is a non-resident of the state a discharge under a state law cannot affect him unless he voluntarily becomes a party to the proceeding, and this is the case irrespective of where the contract was entered into or was to be performed.

Place of making or place of performance is utterly immaterial in all cases where the creditor is not a citizen of the state granting the discharge. *Citizenship of the parties*, and not the place of the making or the place fixed for the performance of the contract, is the controlling element.

As the plaintiff was undoubtedly a citizen of Iowa at the time the defendant obtained his discharge in New York, it is not necessary to decide the question, so warmly debated by counsel, whether

the defendant did in fact acquire a residence in New York at the time he applied for relief under its insolvent laws. To my mind this is doubtful, but as the evidence is conflicting and by no means decisive, we ought not on this ground to disturb the judgment of his Honor below. This has made it necessary to dispose of the case on the assumption that the defendant was not a citizen of Iowa, but was a citizen of New York when he applied for his discharge.

Judgment reversed.

Supreme Judicial Court of Maine.

ELBRIDGE W. ROBINSON *v.* WARREN WEEKS.

The contracts of infants are:—

(1). Binding—when for necessaries at fair rates;

(2). Void—when manifestly and necessarily prejudicial; and

(3). Voidable, at the infants' election, either during minority or within a reasonable time after attaining majority: including all executory agreements not for necessaries, and all executed contracts of this sort wherein the other party can be placed substantially *in statu quo*.

Mere receipts for money paid for stock in a petroleum company, being for no appreciable value, need not be returned by a rescinding infant before the commencement of his action for the recovery of money thus paid.

ASSUMPSIT for money paid for stock in an oil company.

The plaintiff was born October 31st 1845. On March 3d, and April 18th 1866, the plaintiff paid the defendant $200, and received therefor only two receipts, one signed by the defendant and the other by the defendant's agent, of the following tenor: "Received of E. W. Robinson, one hundred dollars for one-half of his share in the Mt. Vernon Land and Petroleum Co." On November 12th 1866, the plaintiff repudiated the contract, demanded of the defendant the money paid, and offered to assign to him all interest he might have in the company; but did not offer to return the receipts.

Kempton, for the plaintiff.

S. Belcher, for the defendant.

BARROWS, J.—If the receipts which the defendant and his